

AMENDMENT NO. _____

Calendar No. _____

Purpose: Modifying provisions relating to leasing.

IN THE SENATE OF THE UNITED STATES—108th Cong., 2d Sess.

S. 1637

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Sta**AMENDMENT No.****2646****By** Grassley-Baucus**To:** Amdt. No. 2645y
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d18**Page(s)**

GPO: 2002 83-247(Mac)

Referred to the Committee on _____
and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. GRASSLEY to
the amendment (No. _____) proposed by

Viz:

- 1 Strike sections 472 through 476 and insert:
- 2 **SEC. 472. CLASS LIVES FOR UTILITY GRADING COSTS.**
- 3 (a) GAS UTILITY PROPERTY.—Section 168(e)(3)(E)
- 4 (defining 15-year property) is amended by striking “and”
- 5 at the end of clause (ii), by striking the period at the end
- 6 of clause (iii) and inserting “, and”, and by adding at the
- 7 end the following new clause:

1 “(iv) initial clearing and grading land
2 improvements with respect to gas utility
3 property.”.

4 (b) ELECTRIC UTILITY PROPERTY.—Section
5 168(e)(3) is amended by adding at the end the following
6 new subparagraph:

7 “(F) 20-YEAR PROPERTY.—The term ‘20-
8 year property’ means initial clearing and grad-
9 ing land improvements with respect to any elec-
10 tric utility transmission and distribution
11 plant.”.

12 (c) CONFORMING AMENDMENTS.—The table con-
13 tained in section 168(g)(3)(B) is amended—

14 (1) by inserting “or (E)(iv)” after “(E)(iii)”,
15 and

16 (2) by adding at the end the following new
17 item:

 “(F) 25”.

18 (d) EFFECTIVE DATE.—The amendments made by
19 this section shall apply to property placed in service after
20 the date of the enactment of this Act.

21 **SEC. 473. EXPANSION OF LIMITATION ON DEPRECIATION**
22 **OF CERTAIN PASSENGER AUTOMOBILES.**

23 (a) IN GENERAL.—Section 179(b) (relating to limita-
24 tions) is amended by adding at the end the following new
25 paragraph:

1 “(6) LIMITATION ON COST TAKEN INTO AC-
2 COUNT FOR CERTAIN PASSENGER VEHICLES.—

3 “(A) IN GENERAL.—The cost of any sport
4 utility vehicle for any taxable year which may
5 be taken into account under this section shall
6 not exceed \$25,000.

7 “(B) SPORT UTILITY VEHICLE.—For pur-
8 poses of subparagraph (A)—

9 “(i) IN GENERAL.—The term ‘sport
10 utility vehicle’ means any 4-wheeled vehicle
11 which—

12 “(I) is manufactured primarily
13 for use on public streets, roads, and
14 highways,

15 “(II) is not subject to section
16 280F, and

17 “(III) is rated at not more than
18 14,000 pounds gross vehicle weight.

19 “(ii) CERTAIN VEHICLES EX-
20 CLUDED.—Such term does not include any
21 vehicle which—

22 “(I) does not have the primary
23 load carrying device or container at-
24 tached,

1 “(II) has a seating capacity of
2 more than 12 individuals,

3 “(III) is designed for more than
4 9 individuals in seating rearward of
5 the driver’s seat,

6 “(IV) is equipped with an open
7 cargo area, or a covered box not read-
8 ily accessible from the passenger com-
9 partment, of at least 72.0 inches in
10 interior length, or

11 “(V) has an integral enclosure,
12 fully enclosing the driver compartment
13 and load carrying device, does not
14 have seating rearward of the driver’s
15 seat, and has no body section pro-
16 truding more than 30 inches ahead of
17 the leading edge of the windshield.”.

18 (c) EFFECTIVE DATE.—The amendments made by
19 this section shall apply to property placed in service after
20 the date of the enactment of this Act.

21 **SEC. 474. CONSISTENT AMORTIZATION OF PERIODS FOR IN-**
22 **TANGIBLES.**

23 (a) START-UP EXPENDITURES.—

1 (1) ALLOWANCE OF DEDUCTION.—Paragraph
2 (1) of section 195(b) (relating to start-up expendi-
3 tures) is amended to read as follows:

4 “(1) ALLOWANCE OF DEDUCTION.—If a tax-
5 payer elects the application of this subsection with
6 respect to any start-up expenditures—

7 “(A) the taxpayer shall be allowed a deduc-
8 tion for the taxable year in which the active
9 trade or business begins in an amount equal to
10 the lesser of—

11 “(i) the amount of start-up expendi-
12 tures with respect to the active trade or
13 business, or

14 “(ii) \$5,000, reduced (but not below
15 zero) by the amount by which such start-
16 up expenditures exceed \$50,000, and

17 “(B) the remainder of such start-up ex-
18 penditures shall be allowed as a deduction rat-
19 ably over the 180-month period beginning with
20 the month in which the active trade or business
21 begins.”.

22 (2) CONFORMING AMENDMENT.—Subsection (b)
23 of section 195 is amended by striking “AMORTIZE”
24 and inserting “DEDUCT” in the heading.

1 (b) ORGANIZATIONAL EXPENDITURES.—Subsection
2 (a) of section 248 (relating to organizational expenditures)
3 is amended to read as follows:

4 “(a) ELECTION TO DEDUCT.—If a corporation elects
5 the application of this subsection (in accordance with reg-
6 ulations prescribed by the Secretary) with respect to any
7 organizational expenditures—

8 “(1) the corporation shall be allowed a deduc-
9 tion for the taxable year in which the corporation be-
10 gins business in an amount equal to the lesser of—

11 “(A) the amount of organizational expendi-
12 tures with respect to the taxpayer, or

13 “(B) \$5,000, reduced (but not below zero)
14 by the amount by which such organizational ex-
15 penditures exceed \$50,000, and

16 “(2) the remainder of such organizational ex-
17 penditures shall be allowed as a deduction ratably
18 over the 180-month period beginning with the month
19 in which the corporation begins business.”.

20 (c) TREATMENT OF ORGANIZATIONAL AND SYNDICA-
21 TION FEES OR PARTNERSHIPS.—

22 (1) IN GENERAL.—Section 709(b) (relating to
23 amortization of organization fees) is amended by re-
24 designating paragraph (2) as paragraph (3) and by
25 amending paragraph (1) to read as follows:

1 “(1) ALLOWANCE OF DEDUCTION.—If a tax-
2 payer elects the application of this subsection (in ac-
3 cordance with regulations prescribed by the Sec-
4 retary) with respect to any organizational
5 expenses—

6 “(A) the taxpayer shall be allowed a deduc-
7 tion for the taxable year in which the partner-
8 ship begins business in an amount equal to the
9 lesser of—

10 “(i) the amount of organizational ex-
11 penses with respect to the partnership, or

12 “(ii) \$5,000, reduced (but not below
13 zero) by the amount by which such organi-
14 zational expenses exceed \$50,000, and

15 “(B) the remainder of such organizational
16 expenses shall be allowed as a deduction ratably
17 over the 180-month period beginning with the
18 month in which the partnership begins busi-
19 ness.

20 “(2) DISPOSITIONS BEFORE CLOSE OF AMORTI-
21 ZATION PERIOD.—In any case in which a partner-
22 ship is liquidated before the end of the period to
23 which paragraph (1)(B) applies, any deferred ex-
24 penses attributable to the partnership which were
25 not allowed as a deduction by reason of this section

1 may be deducted to the extent allowable under sec-
2 tion 165.”.

3 (2) CONFORMING AMENDMENT.—Subsection (b)
4 of section 709 is amended by striking “AMORTIZA-
5 TION” and inserting “DEDUCTION” in the heading.

6 (d) EFFECTIVE DATE.—The amendments made by
7 this section shall apply to amounts paid or incurred after
8 the date of the enactment of this Act.

9 **SEC. 475. REFORM OF TAX TREATMENT OF LEASING OPER-**
10 **ATIONS.**

11 (a) CLARIFICATION OF RECOVERY PERIOD FOR TAX-
12 EXEMPT USE PROPERTY SUBJECT TO LEASE.—Subpara-
13 graph (A) of section 168(g)(3) (relating to special rules
14 for determining class life) is amended by inserting “(not-
15 withstanding any other subparagraph of this paragraph)”
16 after “shall”.

17 (b) LIMITATION ON DEPRECIATION PERIOD FOR
18 SOFTWARE LEASED TO TAX-EXEMPT ENTITY.—Para-
19 graph (1) of section 167(f) is amended by adding at the
20 end the following new subparagraph:

21 “(C) TAX-EXEMPT USE PROPERTY SUB-
22 JECT TO LEASE.—In the case of computer soft-
23 ware which would be tax-exempt use property
24 as defined in subsection (h) of section 168 if
25 such section applied to computer software, the

1 useful life under subparagraph (A) shall not be
2 less than 125 percent of the lease term (within
3 the meaning of section 168(i)(3)).”

4 (c) LEASE TERM TO INCLUDE RELATED SERVICE
5 CONTRACTS.—Subparagraph (A) of section 168(i)(3) (re-
6 lating to lease term) is amended by striking “and” at the
7 end of clause (i), by redesignating clause (ii) as clause
8 (iii), and by inserting after clause (i) the following new
9 clause:

10 “(ii) the term of a lease shall include
11 the term of any service contract or similar
12 arrangement (whether or not treated as a
13 lease under section 7701(e))—

14 “(I) which is part of the same
15 transaction (or series of related trans-
16 actions) which includes the lease, and

17 “(II) which is with respect to the
18 property subject to the lease or sub-
19 stantially similar property, and”.

20 (d) EFFECTIVE DATE.—The amendments made by
21 this section shall apply to leases entered into after Decem-
22 ber 31, 2003.

1 **SEC. 476. LIMITATION ON DEDUCTIONS ALLOCABLE TO**
2 **PROPERTY USED BY GOVERNMENTS OR**
3 **OTHER TAX-EXEMPT ENTITIES.**

4 (a) IN GENERAL.—Subpart C of part II of sub-
5 chapter E of chapter 1 (relating to taxable year for which
6 deductions taken) is amended by adding at the end the
7 following new section:

8 **“SEC. 470. LIMITATIONS ON LOSSES FROM TAX-EXEMPT**
9 **USE PROPERTY.**

10 “(a) LIMITATION ON LOSSES.—Except as otherwise
11 provided in this section, a tax-exempt use loss for any tax-
12 able year shall not be allowed.

13 “(b) DISALLOWED LOSS CARRIED TO NEXT YEAR.—
14 Any tax-exempt use loss with respect to any tax-exempt
15 use property which is disallowed under subsection (a) for
16 any taxable year shall be treated as a deduction with re-
17 spect to such property in the next taxable year.

18 “(c) DEFINITIONS.—For purposes of this section—

19 “(1) TAX-EXEMPT USE LOSS.—The term ‘tax-
20 exempt use loss’ means, with respect to any taxable
21 year, the amount (if any) by which—

22 “(A) the sum of—

23 “(i) the aggregate deductions (other
24 than interest) directly allocable to a tax-ex-
25 empt use property, plus

1 “(ii) the aggregate deductions for in-
2 terest properly allocable to such property,
3 exceed

4 “(B) the aggregate income from such
5 property.

6 “(2) TAX-EXEMPT USE PROPERTY.—The term
7 ‘tax-exempt use property’ has the meaning given to
8 such term by section 168(h) (without regard to
9 paragraph (1)(C) or (3)(C) thereof and determined
10 as if property described in section 167(f)(1)(B) were
11 tangible property).

12 “(d) EXCEPTION FOR CERTAIN LEASES.—This sec-
13 tion shall not apply to any lease of property which meets
14 the requirements of all of the following paragraphs:

15 “(1) PROPERTY NOT FINANCED WITH TAX-EX-
16 EMPT BONDS.—A lease of property meets the re-
17 quirements of this paragraph if no part of the prop-
18 erty was financed (directly or indirectly) from the
19 proceeds of an obligation the interest on which is ex-
20 empt from tax under section 103(a) and which (or
21 any refunding bond of which) is outstanding when
22 the lease is entered into. The Secretary may by reg-
23 ulations provide for a de minimis exception from this
24 paragraph.

25 “(2) AVAILABILITY OF FUNDS.—

1 “(A) IN GENERAL.—A lease of property
2 meets the requirements of this paragraph if (at
3 any time during the lease term) not more than
4 an allowable amount of funds are—

5 “(i) subject to any arrangement re-
6 ferred to in subparagraph (B), or

7 “(ii) otherwise reasonably expected to
8 remain available,

9 to or for the benefit of the lessor or any lender,
10 or to or for the benefit of the lessee to satisfy
11 the lessee’s obligations or options under the
12 lease.

13 “(B) ARRANGEMENTS.—The arrangements
14 referred to in this subparagraph are—

15 “(i) a defeasance arrangement, a loan
16 by the lessee to the lessor or any lender, a
17 deposit arrangement, a letter of credit
18 collateralized with cash or cash equiva-
19 lents, a payment undertaking agreement, a
20 lease prepayment, a sinking fund arrange-
21 ment, or any similar arrangement (whether
22 or not such arrangement provides credit
23 support), and

24 “(ii) any other arrangement identified
25 by the Secretary in regulations.

1 “(C) ALLOWABLE AMOUNT.—

2 “(i) IN GENERAL.—Except as other-
3 wise provided in this subparagraph, the
4 term ‘allowable amount’ means an amount
5 equal to 20 percent of the lessor’s adjusted
6 basis in the property at the time the lease
7 is entered into.

8 “(ii) HIGHER AMOUNT PERMITTED IN
9 CERTAIN CASES.—To the extent provided
10 in regulations, a higher percentage shall be
11 permitted under clause (i) where necessary
12 because of the credit-worthiness of the les-
13 see. In no event may such regulations per-
14 mit a percentage of more than 50 percent.

15 “(iii) OPTION TO PURCHASE.—If
16 under the lease the lessee has the option to
17 purchase the property for other than the
18 fair market value of the property (deter-
19 mined at the time of exercise), the allow-
20 able amount at the time such option may
21 be exercised may not exceed 50 percent of
22 the price at which such option may be ex-
23 ercised.

1 “(3) LESSOR MUST MAKE SUBSTANTIAL EQUITY
2 INVESTMENT.—A lease of property meets the re-
3 quirements of this paragraph if—

4 “(A) the lessor—

5 “(i) has at the time the lease is en-
6 tered into an unconditional at-risk equity
7 investment (as determined by the Sec-
8 retary) in the property of at least 20 per-
9 cent of the lessor’s adjusted basis in the
10 property as of that time, and

11 “(ii) maintains such investment
12 throughout the term of the lease, and

13 “(B) the fair market value of the property
14 at the end of the lease term is reasonably ex-
15 pected to be equal to at least 20 percent of such
16 basis.

17 “(4) LESSEE MAY NOT BEAR MORE THAN MINI-
18 MAL RISK OF LOSS.—

19 “(A) IN GENERAL.—A lease of property
20 meets the requirements of this paragraph if
21 there is no arrangement under which more than
22 a minimal risk of loss (as determined under
23 regulations) in the value of the property is
24 borne by the lessee.

1 “(B) CERTAIN ARRANGEMENTS FAIL RE-
2 QUIREMENT.—In no event will the requirements
3 of this paragraph be met if there is any ar-
4 rangement under which the lessee bears—

5 “(i) any portion of the loss that would
6 occur if the fair market value of the leased
7 property at the time the lease is termi-
8 nated were 25 percent less than its pro-
9 jected fair market value at the end of the
10 lease term, or

11 “(ii) more than 50 percent of the loss
12 that would occur if the fair market value
13 of the leased property at the time the lease
14 is terminated were zero.

15 “(5) REGULATORY REQUIREMENTS.—A lease of
16 property meets the requirements of this paragraph if
17 such lease of property meets such requirements as
18 the Secretary may prescribe by regulations.

19 “(e) SPECIAL RULES.—

20 “(1) TREATMENT OF FORMER TAX-EXEMPT
21 USE PROPERTY.—

22 “(A) IN GENERAL.—In the case of any
23 former tax-exempt use property—

24 “(i) any deduction allowable under
25 subsection (b) with respect to such prop-

1 erty for any taxable year shall be allowed
2 only to the extent of any net income (with-
3 out regard to such deduction) from such
4 property for such taxable year, and

5 “(ii) any portion of such unused de-
6 duction remaining after application of
7 clause (i) shall be treated as a deduction
8 allocable to such property in the next tax-
9 able year.

10 “(B) FORMER TAX-EXEMPT USE PROP-
11 PERTY.—For purposes of this subsection, the
12 term ‘former tax-exempt use property’ means
13 any property which—

14 “(i) is not tax-exempt use property for
15 the taxable year, but

16 “(ii) was tax-exempt use property for
17 any prior taxable year.

18 “(2) DISPOSITION OF ENTIRE INTEREST IN
19 PROPERTY.—If during the taxable year a taxpayer
20 disposes of the taxpayer’s entire interest in tax-ex-
21 empt use property (or former tax-exempt use prop-
22 erty), rules similar to the rules of section 469(g)
23 shall apply for purposes of this section.

1 “(3) COORDINATION WITH SECTION 469.—This
2 section shall be applied before the application of sec-
3 tion 469.

4 “(f) OTHER DEFINITIONS.—For purposes of this
5 section—

6 “(1) RELATED PARTIES.—The terms ‘lessor’,
7 ‘lessee’, and ‘lender’ include any related party (with-
8 in the meaning of section 197(f)(9)(C)(i)).

9 “(2) LEASE TERM.—The term ‘lease term’ has
10 the meaning given to such term by section 168(i)(3).

11 “(3) LENDER.—The term ‘lender’ means, with
12 respect to any lease, a person that makes a loan to
13 the lessor which is secured (or economically similar
14 to being secured) by the lease or the leased property.

15 “(4) LOAN.—The term ‘loan’ includes any simi-
16 lar arrangement.

17 “(g) REGULATIONS.—The Secretary shall prescribe
18 such regulations as may be necessary or appropriate to
19 carry out the provisions of this section, including regula-
20 tion which—

21 “(1) allow in appropriate cases the aggregation
22 of property subject to the same lease, and

23 “(2) provide for the determination of the alloca-
24 tion of interest expense for purposes of this section.”

1 (b) CONFORMING AMENDMENT.—The table of sec-
2 tions for subpart C of part II of subchapter E of chapter
3 1 is amended by adding at the end the following new item:

“Sec. 470. Limitations on losses from tax-exempt use property.”

4 (c) EFFECTIVE DATE.—The amendments made by
5 this section shall apply to leases entered into after Decem-
6 ber 31, 2003.